

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CYNTHIA BITSUIE JONES, MICHAEL
WHITEHORSE, and JOHNSON JOE
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING MOTION TO
CONTINUE AND DEFERRING
JUDGMENT ON MOTION TO
SEVER

Case No. 2:09-CR-920 TS

This matter is before the Court on Defendant Bitsuie Jones' Motion to Continue and Motion to Sever. Defendants Whitehorse and Joe have joined both of Defendant Jones' motions. For the reasons stated below the Court will grant the motion to continue and defer judgment on the motion to sever.

Defendants have indicated to the Court that they need additional time to prepare for trial, or in the alternative negotiate possible plea agreements with the government. Defendants state that despite continued efforts to locate and interview witnesses, this effort has been hampered due to the remote location of witnesses. Moreover, given the serious nature of the alleged criminal conduct and associated punishment, interviews and discussions with all witnesses is

imperative. Defendants have also hired experts who need additional time to review the files. On the facts presented in this case, the Court finds that the failure to grant a continuance would deny Defendants counsel adequate time to prepare for trial taking into account the exercise of due diligence, resulting in a miscarriage of justice.¹ For the above reasons the Court finds the ends of justice outweigh the best interest of the public and the defendant in a speedy trial in accordance with 18 U.S.C. § 3161(h)(7). Therefore the Court will exclude the time between April 12, 2010 and the new trial date according to the Speedy Trial Act.

Defendants Bitsuie and Whitehorse also raise *Bruton*,² as a basis for severance in this case. Because the Court has already granted a continuance to allow additional time for Defendants to prepare for trial and/or enter into plea negotiations, it agrees with the government that such a decision is premature at this time. Although the Court finds that *Bruton* might be implicated in this case, and therefore severance might be necessary, until all parties have a better understanding of who will actually be going to trial, such a determination is unnecessary and inappropriate. The Court will set a plea-cut off thirty (30) days before the new trial date in order to afford all the parties to engage in the necessary trial preparations, and revisit the issues relating to severance.

It is therefore

ORDERED that Defendant Bitsuie Jones' Motion to Continue (Docket No. 56) is GRANTED. It is further

¹18 U.S.C. § 3161(H)(7)(B).

²*Bruton v. United States of America*, 391 U.S. 123 (1968).

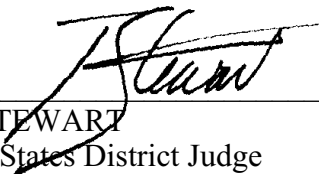
ORDERED that Defendant Bitsuie Jones' Motion to Sever (Docket No. 53) is DEFERRED until the parties and the Court is clear on which Defendants will proceed to trial. It is further

ORDERED that a Status Conference be set for May 11, 2010 at 2:00 p.m. in room 142. It is further

ORDERED that the Final Pre-Trial conference scheduled for March 29, 2010 is STRICKEN.

DATED March 25, 2010.

BY THE COURT:



TED STEWART
United States District Judge